

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

CITY OF AUDUBON
Audubon County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2011-AQ- 03
NO. 2011-SW- 04

TO: City of Audubon
c/o Steve Stetzel, PW Administrator
410 N. Park Place
Audubon, Iowa 50025-1299

City of Audubon
Clark "Sam" Kauffman, Mayor
410 N. Park Place
Audubon, Iowa 50025-1299

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Audubon for the purpose of resolving solid waste disposal and illegal open burning violations that occurred in Audubon County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dan Stipe
Iowa Department of Natural Resources
Field Office No. 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to

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that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The City of Audubon is the county seat for Audubon County in west central Iowa. The city operates a tree and tree trimming burn site east of town. Godbersen-Smith Construction Company (Godbersen) is located in Ida Grove, Iowa. Godbersen manufactures construction machinery, such as pavers and equipment for bridge construction.

2. On June 24, 2009, DNR Field Office No. 4 received a complaint regarding open burning of solid waste from a bridge project in the City of Audubon. The complaint was from the Audubon County Department of Health, and stated that a large amount of black smoke was being generated by the illegal open burning. The complainant included five photographs showing the open burning.

3. Dan Stipe of DNR Field Office No. 4 investigated the complaint. Mr. Stipe observed that the complaint was valid and took photographs to document his observations.

4. Mr. Stipe contacted the Audubon County Transfer Station for information. He was informed that Godbersen employees had brought some of the bridge project solid waste to the transfer station and had stated that they also were going to burn some of the solid waste at the City of Audubon's tree and tree trimming burn site. Audubon Transfer Station staff also sent an email to Mr. Stipe confirming this information.

5. Mr. Stipe attempted to contact the City of Audubon by telephone. Following a discussion between Mr. Stipe and Mr. Steve Stetzel, Public Works Administrator for the City of Audubon, Mr. Stipe requested that Mr. Stetzel provide a written explanation of what had occurred with the bridge project solid waste.

6. On July 1, 2009, DNR Field Office No. 4 received a written explanation from Mr. Stetzel, stating that the city had allowed Godbersen to use the city's tree and tree trimming site to burn lumber.

7. On July 2, 2009, Mr. Stipe contacted Rich Jorgensen of Godbersen. Mr. Jorgensen stated that he burned lumber from the bridge project, including cedar pilings.

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8 On July 3, 2009, Mr. Stipe drove to Audubon to meet with Mr. Stetzel about the complaint. However, Mr. Stetzel was not able to meet with Mr. Stipe, so Mr. Stipe instead sent a copy of the proposed Notice of Violation letter to Mr. Stetzel.

9 July 6, 2009, Notice of Violation letters were sent to both the City of Audubon and to Godbersen, citing the violations of illegal open dumping and illegal open burning.

10 On July 8, 2009, Mr. Stetzel submitted to DNR copies of receipts from the Audubon County Transfer Station. The receipts indicated that 8.02 tons of solid waste were taken to the transfer station.

11 On July 10, 2009, Mr. Stipe visited the City of Audubon's tree and tree trimming site. The solid waste had been removed and the removal was documented with a photograph.

12 The City of Audubon was specifically made aware of the prohibitions against illegal open dumping and illegal open burning when DNR Field Office No. 4 sent a May 22, 2000, letter to the City of Audubon and all the other incorporated communities in DNR Field Office Region 4, informing those entities of the law and enclosing copies of the relevant DNR rules.

IV. CONCLUSIONS OF LAW

1 Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The above facts demonstrate violations of this provision.

3 Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate non-compliance with this provision.

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V. ORDER

THEREFORE, DNR orders and the City of Audubon agrees to the following:

1. The City of Audubon shall cease all illegal solid waste disposal and open burning activities;
2. The City of Audubon shall operate its tree and tree trimming burn site in compliance with Iowa law, and if the city fails to comply, the city shall close the tree and tree trimming site;
3. The City of Audubon shall provide training to its employees regarding compliance with DNR's solid waste and open burning rules, and a copy of the employee training plan shall be submitted to DNR within 60 days of the date this order is signed by the Director; and
4. The City of Audubon shall pay a penalty of \$2,500.00 within 60 days of the date this order is signed by the Director

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$2,500.00 is assessed by this administrative consent order. The penalty must be paid within 60 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307 (3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

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Economic Benefit – An economic benefit was realized from open burning and improper waste disposal. However, the City of Audubon hired and presumably paid Godbersen to dispose of the waste, so Godbersen was the direct beneficiary of this economic benefit. Therefore, no economic benefit is assessed to the City of Audubon.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authority by the Iowa Code for that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined at this time that the most equitable and efficient means of resolving this matter is through the issuance of an administrative consent order. Failure to properly dispose of solid waste threatens the integrity of the regulatory program. Improper solid waste disposal and open burning can degrade water quality and contribute contaminants to land, water, and the air, as well as threaten public health. \$500.00 is assessed for solid waste violations, and an additional \$500.00 is assessed for air quality violations. Therefore, a total of \$1,000.00 is assessed for this factor.

Culpability – Both the City of Audubon and Godbersen have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's requirements. Further, the City of Audubon was specifically made aware of the prohibitions against illegal open dumping and illegal open burning when DNR Field Office No. 4 sent a May 22, 2000, letter to the City of Audubon and all the other incorporated communities in DNR Field Office Region 4, informing those entities of the law and enclosing copies of the relevant DNR rules. Therefore, \$1,000.00 is assessed for this factor.

Aggravating Factor – The open burning of construction and demolition waste or trade waste is an educational priority for the DNR. Governmental entities and entities working with them should set a good example for citizens in this area. Therefore, an additional \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the City of Audubon. For that reason, the City of Audubon waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil

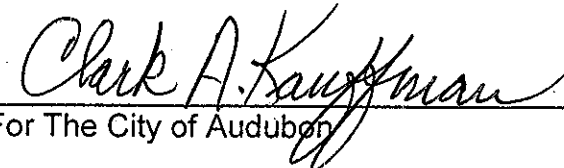
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penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV Conclusions of Law" of this administrative consent order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 20 day of
March, 2011



For The City of Audubon

Dated this 14 day of
February, 2011

Audubon County Air Quality file; Anne Preziosi; DNR Field Office 4; VII.C.2